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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD PALMERI

Appeal 2011-000491
Application 09/578,085
Technology Center 3600

Before BIBHU R. MOHANTY, MEREDITH C. PETRAVICK, and MICHAEL W. KIM, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Richard Palmeri (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 30-58. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM. [1]

THE INVENTION

Claims 30 and 46, reproduced below, are illustrative of the subject matter on appeal.

> 30. A method of electronically reallocating a portion of a transaction amount in a transaction between a user and a vendor, comprising the steps of:
>
> maintaining at least one user account;
>
> maintaining at least one vendor account;
>
> maintaining at least one user trust account;
>
> initiating said transaction for said transaction amount;
>
> electronically distributing at least a portion reallocated from said transaction amount from said user account to said vendor account using at least one electronic system; and
>
> electronically distributing said portion

[1] Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed May 11, 2007) and Reply Brief ("Reply Br.," filed May 12, 2008), and the Examiner's Answer ("Ans.," mailed Mar. 6, 2008).

reallocated from said transaction amount from said vendor account to said user trust account using at least one electronic system, wherein said portion allocated from said transaction amount in said user trust account is placed in a user investment vehicle for said user.

46. A method of electronically reallocating a portion of a transaction amount in a transaction between a user and a vendor, comprising the steps of:

maintaining at least one user account;

electronically receiving at least a portion reallocated from said transaction amount from said vendor to said user account proximate in time to said transaction using an electronic system; and

placing said portion reallocated from said transaction amount in a user investment vehicle for said user.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Burke	US 5,621,640	Apr. 15, 1997
Hartt	WO 94/04979 A1	March 3, 1994

The following rejection is before us for review:

1. Claims 30-58 are rejected under 35 U.S.C. §103(a) as being unpatentable over Burke and Hartt.

ISSUES

The first issue is whether claims 30-45 and 56-58 are unpatentable under 35 U.S.C. §103(a) over Burke and Hartt. Specifically, a major issue is the meaning of the claim term "transaction amount."

The second issue is whether claims 46-55 are unpatentable under 35 U.S.C. § 103(a) over Burke and Hartt. Specifically, a major issue is whether the combination of Burke and Hartt teaches that the recited receiving step occurs proximate the transaction.

FINDINGS OF FACT

We find that the findings of fact (FF) which appear in the Analysis below are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

ANALYSIS

The Appellant argues claims 30-58 as a single group. *See* App. Br. 4-12 and Reply Br. 3-7. However, since the scope of independent claims 30 and 37 differs from independent claims 46 and 52, we will address these two groups separately. Therefore, claims 31-45 and 56-58 will stand or fall with claim 30 and claims 47-55 will stand or fall with claim 46. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Claims 30-45 and 56-58

The Appellant makes multiple arguments contesting the Examiner's combination of Burke and Hartt. App. Br. 4-12 and Reply Br. 3-7. At the crux of each of the arguments is the meaning of the term "transaction amount." The Appellant argues that the claimed "transaction amount" must be construed as the sale price of the transaction and not the payment amount, since this is what is disclosed in the Specification. *Id.* Further, the Appellant argues that the claims require that the reallocated portion of the transaction amount originates with the vendor and not the customer. Reply Br. 3-7.

We are not persuaded by the Appellant's arguments as they are based on limitations not recited in the claim. Limitations appearing in the Specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003). While, as the Appellant argues (Reply Br. 3-7), the Specification describes an embodiment that includes the vendor reallocating a portion of a payment for the sale price, this is not required by the claim. We see nothing in the claim that requires the recited "transaction amount" to be the sale price nor do we see anything in the claim that requires that the reallocated portion of the transaction amount originate with the vendor.

Further, in as much as the Appellant argues that the references themselves must contain a teaching, suggestion, or motivation for the combination, this is not required. We note that the Examiner provides an articulated reasoning with logical underpinning to support the combination (*see* Ans. 4 "to provide an automatic transfer system wherein funds are transferred in a more secure manner, and at the same time encouraging

consumers to purchase at a desired vendor."). The Appellant does not contest the substance of the Examiner's reasoning.

For the reasons above, we are not persuaded by the Appellant's argument that the Examiner erred. Accordingly, the rejection of claims 30-45 and 56-58 under 35 U.S.C. § 103(a) as being unpatentable over Burke and Hartt is affirmed.

Claims 46-55

First, in as much as the Appellant's arguments discussed above apply to claims 46-55, we find these arguments unpersuasive for the reasons discussed above.

Second, the Appellant argues Hartt does not teach that the receiving step recited in claim 46 occurs proximate to the transaction as recited in claim 46. *See* App. Br. 6 and 10-11. The term "proximate" is a relativistic term. We are not persuaded by the Appellant's argument that the Examiner's interpretation of "proximate," as encompassing the disclosure in Hartt, is unreasonably broad. The Appellant's argument does not address what is the broadest reasonable meaning of the term "proximate." Therefore, we are not persuaded by the Appellant's argument that the Examiner erred. Further, we note that Burke states: "Deposits in the other accounts OA may be sent immediately or held until a sufficient amount is accumulated to be acceptable by the other institutions." Col. 3, ll. 27-29.

For the reasons above, we are not persuaded by the Appellant's argument that the Examiner erred. Accordingly, the rejection of claims 46-55 under 35 U.S.C. § 103(a) as being unpatentable over Burke and Hartt is affirmed.

DECISION

The decision of the Examiner to reject claims 30-58 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) .

AFFIRMED

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